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### REMARKS

The claims have been amended for editorial reasons and to correct the claim misnumbering noted by the Examiner. Claims 17-57 (including both original claims numbered 57) have been canceled. New claim 58 replaces the first original claim 57 (on page 23); new claim 59 replaces original claim 54; new claim 60 replaces original claim 55; new claim 61 replaces the second original claim 57 (on page 24). No new matter has been added.

### Restriction Requirement Under 35 U.S.C. § 1.21

In the Action dated October 25, 2005, the Examiner has required restriction to one of the following inventions under 35 U.S.C. § 121:

- I. Claims 1-16 and claim 57 (Original claim 57 on page 24), drawn to a method for attaching and incubating liver cells in the presence of a cell adhesion promoting surface comprising CAR, ECM and an optional active factor, classified in class 435, subclass 395, for example.
- II. Claims 17-28 and claim 56 (Original claim 56 on page 24), drawn to a cell culture of liver cells, classified in class 435, subclass 370, for example.
- III. Claims 29-34, drawn to a method for screening test agent effect on liver cells, classified in class 435, subclass 4, for example.
- IV. Claims 35 and 36, drawn to a method of making an ECM-modified composition for cell attachment comprising CAR, ECM and an optional active factor, classified in class 514, subclass 2+, for example.
- V. Claims 37-52, drawn to an ECM-modified composition comprising CAR and ECM, classified in class 514, subclass 2+, for example.
- VI. Claims(s) 53, drawn to a method for attaching cells to an ECM-modified composition comprising CAR and ECM, classified in class 435, subclass 325+, for example.

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- VII. Claim(s) 57 (Original claim 57 on page 23), drawn to a method for attaching and maintaining liver cells in the presence of a surface comprising CAR, collagen I and poly-L-ornithine, classified in class 435, subclass 370, for example.
- VIII. Claim(s) 54 (Original claim 54 on page 23), drawn to a method for attaching and maintaining liver cells in the presence of a surface comprising CAR, collagen IV and poly-L-ornithine, classified in class 435, subclass 370, for example.
- IX. Claim(s) 55 (Original claim 55 on page 24), drawn to a method for attaching and maintaining liver cells in the presence of a surface comprising CAR, collagen IV [*sic*, collagen VI] and elastin, classified in class 435, subclass 370, for example.

In view of this Restriction/Election requirement, Applicants elect the claims of Group I with traverse. Applicants traverse because the claims in groups VII, VIII, and IX are not separate inventions, but rather species of the invention more broadly claimed in claim 1. Indeed, original independent claim 57 on page 23 (now replaced with new claim 58) recited CAR, collagen I and poly-L-ornithine, which are all recited in dependent claim 10 (which is in Group I); original independent claim 54 (now replaced with new claim 59) recited CAR, collagen IV and poly-L-ornithine, which are all recited in dependent claim 11 (which is in Group I); and original independent claim 55 (now replaced with new claim 60) recited CAR, collagen VI and elastin, which are all recited in dependent claim 9 (which is in Group I).

If the restriction requirement as between Groups I and each of VII, VIII, and IX is maintained as to new claims 58, 59 and 60, obviousness-type double patenting cannot be held between a patent application containing any of these claims and a patent application containing claims 9, 10, and 11, or vice versa. See the introduction to MPEP § 806, which states: "Where inventions are related as disclosed but are not distinct as claimed, restriction is never proper. Where restriction is required by the Office double patenting

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cannot be held, and thus, it is imperative the requirement should never be made where related inventions as claimed are not distinct." See also, MPEP § 804.01, which states:

The third sentence of 35 U.S.C. 121 prohibits the use of a patent issuing on an application with respect to which a requirement for restriction has been made, or on an application filed as a result of such a requirement, as a reference against any divisional application, if the divisional application is filed before the issuance of the patent. ... This apparent nullification of double patenting as a ground of rejection or invalidity in such cases imposes a heavy burden on the Office to guard against erroneous requirements for restrictions where the claims define essentially the same invention in different language and which, if acquiesced in, might result in the issuance of several patents for the same invention.

Accordingly, Applicant respectfully requests that new claims 58, 59 and 60, which replace the claims in Group VII, VIII, and IX, be included with the claims of Group I, particularly dependent claims 9, 10, and 11.

#### **Election of Species**

The Examiner has further required election of species for the article selected from:

- (1) different ECM materials
- (2) different CAR materials; and
- (3) different active factor materials

Applicants elect without traverse the following: ECM material – collagen I; CAR material – hyaluronic acid (HA); active factor – poly-L-ornithine. The pending claims readable on the elected species are 1-8, 10, 12-16, and 58.

As noted above, Applicants are including a petition for a 1-month extension of time herewith. However, if any additional fee is deemed necessary, the Commissioner is hereby authorized to charge payment or credit any overpayment to Deposit Account No. 02-1666 for any additional fees required under 37 CFR §§ 1.16 or 1.17.

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Should there be any outstanding matters that need to be resolved in the present application; the Examiner is invited to call the Applicants' undersigned attorney at the telephone number shown below.

Respectfully submitted,



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